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5 *Attorneys for Plaintiff*
6 Jewish Legal News, Inc.

7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION

10
11 JEWISH LEGAL NEWS, INC.,

12 Plaintiff,

13 v.

14 U.S. CUSTOMS AND BORDER
15 PROTECTION, U.S. IMMIGRATION AND
16 CUSTOMS ENFORCEMENT,

17 Defendants.

Case No.: [Case No.]

COMPLAINT

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19 Jewish Legal News, Inc. (“JLN” or “Plaintiff”), by and through its undersigned counsel, alleges
20 as follows:

21 1. This is an action under the Freedom of Information Act (“FOIA” or the “Act”), 5 U.S.C.
22 § 552, for declaratory, injunctive, and other appropriate relief by the JLN against the United States
23 Customs and Border Protection (“Customs and Border Protection,” “CBP” or “Defendant”) and United
24 States Immigration and Customs Enforcement (“ICE” or “Defendant,” or collectively, “Defendants”).
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1 2. JLN is an online news magazine located at www.jewishlegalnews.com that covers
2 important debates and issues in the Jewish communities in the US, Israel, and worldwide. Through
3 public records request, JLN seeks to inform the public about the government's responses to these issues.

4 3. By this action, JLN seeks to compel CBP and ICE to comply with their lawful obligations
5 under FOIA to release the requested records in their possession regarding the threat of Hamas and
6 Hezbollah terrorists entering the United States from the southern border ("Southern Border"). This
7 request is in response to CBP's official warning.

8 4. Defendants have improperly withheld the records requested by Plaintiff in violation of
9 FOIA and in opposition to the public's strong interest in obtaining information regarding the risk of
10 Hamas and Hezbollah gaining access to the United States by crossing the southern border.

11 5. Indeed, on October 23, 2023, ABC News confirmed U.S. Customs and Border Protection
12 officials in San Diego sent an intelligence notice alerting that "Hamas and Hezbollah militants may
13 potentially be encountered at the Southwest border."¹

14 6. This warning was issued only two weeks after Hamas infiltrated the Israeli border and
15 launched major attacks against Israeli civilians on October 7, 2023.

16 7. Accordingly, Plaintiff requested records related to this terrorist threat on an expedited
17 basis to inform the public about potential threats from terrorist organizations infiltrating the southern
18 border in the wake of Hamas attacks.

19 8. However, CBP and ICE failed to substantively respond to Plaintiff's FOIA request.
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26 ¹ See Bianco, Rachel. "San Diego Border Officials Warn of Possible Hezbollah and Hamas Crossings at
27 Southern Border." ABC 10 News San Diego, 23 Oct. 2023, [https://www.10news.com/news/local-
28 news/san-diego-border-officials-warn-of-possible-hezbollah-and-hamas-crossings-at-southern-border](https://www.10news.com/news/local-news/san-diego-border-officials-warn-of-possible-hezbollah-and-hamas-crossings-at-southern-border)
(last accessed November 29, 2023).

1 9. Federal Courts have jurisdiction to enjoin a pattern or practice of unlawfully withholding
2 or delaying information in response to FOIA requests even if a party's claim related to a specific FOIA
3 request is mooted. *See, e.g., Hajro v. United States Citizenship & Immigration Servs.*, 811 F.3d 1086,
4 1103 (9th Cir. 2016).

5 10. Plaintiff is statutorily entitled to disclosure of these requested records, which it seeks so
6 that it may inform the public about this important issue on an expedited basis.
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8 **JURISDICTION AND VENUE**

9 11. This Court has subject matter jurisdiction over this action and personal jurisdiction over
10 Defendants pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

11 12. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B).
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13 **DIVISIONAL ASSIGNMENT**

14 13. Pursuant to Civil L.R. 3-2(c) and 3-5(b), this action should be assigned under Civil L.R.
15 3-2(c) and (d) to the San Francisco / Oakland division because the action arose in San Mateo County,
16 California.

17 **PARTIES**

18 14. Plaintiff Jewish Legal News, Inc. is a nonprofit California corporation located at 3 East
19 3rd Ave., Ste. 200, San Mateo, CA 94401.

20 15. Defendant U.S. Department of Customs and Border Protection ("CBP") is an agency of
21 the federal government within the meaning of 5 U.S.C. § 551, 5 U.S.C. § 552(f), and 5 U.S.C. § 702,
22 which has possession, custody, and/or control of the records that Plaintiff seeks.

23 16. The headquarters of CBP is located at 1300 Pennsylvania Ave., NW Washington, DC
24 20229.
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17. Defendant U.S. Immigrations and Customs Enforcement (“ICE”) is an agency of the federal government within the meaning of 5 U.S.C. § 551, 5 U.S.C. § 552(f), and 5 U.S.C. § 702, which has possession, custody, and/or control of the records that Plaintiff seeks.

18. The headquarters of ICE is located at 500 12th Street, S.W., Washington, D.C. 20536-5010.

FACTUAL ALLEGATIONS

Background

19. On October 7, 2023, before dawn on a holiday, in an operation called “Operation Al Aqsa Storm,” Hamas forces disabled Israel’s defenses and launched a surprise multi-pronged offensive attack on Israel.

20. Hamas surprised their victims by attacking soft targets, including by paragliding into a music festival and stealthily approaching Israeli residences. Hamas also launched 5,000 rockets into Israel.²

21. Eyewitness accounts detail shocking brutality and inhumane torture, including mass rape, immolation, and mutilation.³

22. Hamas forces murdered as many as fourteen hundred (1400) people and took nearly two hundred fifty (250) hostages.

² Robinson, James. “*Militants on Paragliders and '5,000' Rockets: How Hamas Carried Out Deadly Israel Attack.*” Sky News, 7 Oct. 2023, <https://news.sky.com/story/rockets-boats-and-militants-on-paragliders-how-hamas-carried-out-deadly-attack-on-israel-12978931> (last accessed December 4, 2023).

³ “*Graphic Report Details New Evidence of Rape, Sexual Violence During October 7 Rampage.*” Times of Israel, 3 December 2023, <https://www.timesofisrael.com/graphic-report-details-new-evidence-of-rape-sexual-violence-during-october-7-rampage/> (last accessed December 4, 2023).

23. Hezbollah also exchanged fire with Israeli forces.⁴

24. Hezbollah said it was in “direct contact with the leadership of the Palestinian resistance” on Oct. 7.⁵

25. On October 25, 2023, Al Jazeera reported that the head of Lebanon’s Hezbollah armed group met with top Palestinian armed group leaders from Hamas and the Islamic Jihad to discuss what their alliance must do to achieve an “all-out victory” over Israel, according to a statement by Hezbollah.⁶

26. In an interview, Hamas official Ghazi Hamad said: “We must teach Israel a lesson, and we will do this again and again. The Al-Aqsa Flood is just the first time, and there will be a second, a third, a fourth. Because we have the determination...to fight.”⁷

27. Hamas and Hezbollah are designated as terrorist organizations by the United States government.⁸

28. On October 23, 2023, it was reported that a Customs and Border Protection memo warned that foreign terrorist fighters engaged in the Israel-Hamas conflict could soon be attempting to enter the United States via the southern border.⁹

⁴ “What is Hezbollah, the group backing Hamas against Israel?” Reuters, October 31, 2023, <https://www.reuters.com/world/middle-east/what-is-hezbollah-group-backing-hamas-against-israel-2023-10-30>.

⁵ *Id.*

⁶ “Hezbollah, Hamas, Islamic Jihad Chiefs Discuss Route to ‘Victory’ on Israel.” Al Jazeera, 25 Oct. 2023, <https://www.aljazeera.com/news/2023/10/25/hezbollah-hamas-islamic-jihad-chiefs-discuss-route-to-victory-on-israel> (last accessed on November 25, 2023).

⁷ “‘We will repeat October 7 again and again’ - Hamas official.” The Jerusalem Post, 1 Nov. 2023, <https://www.jpost.com/arab-israeli-conflict/article-771199> (last accessed December 4, 2023).

⁸ “Foreign Terrorist Organizations.” United States Department of State, <https://www.state.gov/foreign-terrorist-organizations/> (last accessed on November 25, 2023).

⁹ Shaw, Adam and Melugin, Bill. “CBP Memo Sounds Alarm on Hamas, Hezbollah Fighters Potentially Using Southern Border to Enter US.” Fox News, 23 Oct. 2023, <https://www.foxnews.com/politics/cbp->

31. The memo specifically mentions Hamas, Palestinian Islamic Jihad, the Popular Front for the Liberation of Palestine, and Hezbollah.¹²

Plaintiff's FOIA Request

memo-sounds-alarm-hamas-hezbollah-fighters-potentially-using-southern-border-enter-us (last accessed November 25, 2023).

¹² *Id.*

¹³ See Bianco, Rachel. “*San Diego Border Officials Warn of Possible Hezbollah and Hamas Crossings at Southern Border.*” ABC 10 News San Diego, 23 Oct. 2023, <https://www.10news.com/news/local-news/san-diego-border-officials-warn-of-possible-hezbollah-and-hamas-crossings-at-southern-border> (last accessed November 29, 2023).

1. Incident reports, intelligence briefings, and any other relevant documentation that detail instances where individuals affiliated with Hamas or Hezbollah have been detected trying to enter the U.S. through the southern border.
2. Documents indicating what collaboration exists between Customs and Border Protection (CBP), the Department of Homeland Security (DHS), the Federal Bureau of Investigation (FBI), and any other relevant federal or state agencies in addressing this issue, including any joint task forces, information-sharing initiatives, or coordinated efforts to strengthen the detection and prevention of terrorist entries.
3. Risk assessments, threat analyses, or intelligence reports that evaluate the likelihood and potential impact of Hamas and Hezbollah fighters using the southern border to enter the U.S. Include information on any known or suspected routes, methods, or tactics employed by these individuals or groups to evade detection.
4. Documents demonstrating any training and resources provided to CBP officers, border patrol agents, and other relevant personnel to equip them to detect and respond to potential threats posed by members of Hamas, Hezbollah, or other designated terrorist organizations attempting to enter the U.S. through migrant crossings.
5. Documents on any changes in policy, protocol, or strategy implemented in response to the recent warning issued by Customs and Border Protection regarding the potential for Hamas and Hezbollah fighters to use the southern border to enter the U.S. This should include any new measures put in place to enhance screening, verification, and security checks.
6. Documents demonstrating communications to the public, local communities, and other stakeholders. Include any public advisories, alerts, or educational materials produced to raise awareness and promote vigilance
7. Any aggregated data or statistics regarding the number of reported Hamas and Hezbollah crossings at the southern border.

Date Range: 8/1/21 to 8/1/23

34. The Request complied with all applicable regulations regarding the submission of FOIA requests.

35. The Request sought expedited treatment to inform the public about the threat of Hamas and Hezbollah terrorists entering the U.S. through the Southern Border.

Defendant's Treatment of Plaintiff's FOIA Request

36. It appears Plaintiff's submission was successful because Plaintiff was able to access a copy of the request through ICE's FOIA Portal. *See* Exhibit "A".

1 37. On October 26, 2023, Defendant ICE sent a letter acknowledging receipt and assigning
2 the request 24-IFCO-03180. *See* Exhibit “B”.

3 38. The letter rejected the Request for being too broad. *Id.*

4 39. On October 30, 2023, Plaintiff replied agreeing to narrow the Request to the following:

- 5 1. Incident reports where individuals affiliated with Hamas or Hezbollah have
6 been detected trying to enter the U.S. through the southern border.
- 7 2. Communications exchanged between the Customs and Border Protection
8 (CBP), the Department of Homeland Security (DHS), the Federal Bureau of
9 Investigation (FBI), and any other relevant federal or state agencies related to
10 addressing the threat of Hamas or Hezbollah.
- 11 3. Risk assessments that evaluate the likelihood of Hamas and Hezbollah using
12 the southern border to enter the U.S.
- 13 4. Documents demonstrating communications to the public, local communities,
14 and other stakeholders. Include any public advisories, alerts, or educational
15 materials produced to raise awareness and promote vigilance
- 16 5. Any aggregated data or statistics regarding the number of reported Hamas and
17 Hezbollah crossings at the southern border.

18 The Request also reiterated that it sought expedited treatment because Jewish Legal News, Inc. is
19 an entity primarily engaged in disseminating information through its website at jewishlegalnews.com,
20 and there is a demonstrated urgency to inform the public about terrorist threats to the United States after
21 the October 7, 2023 terrorist attacks on Israeli civilians.

22 40. On October 31, 2023, Defendant ICE sent a letter determining that CBP was in
23 possession of the requested information. *See* Exhibit “D”. However, Plaintiff has not heard anything
24 additional from ICE or CBP.

1 41. As of the filing of this Complaint, it has been more than 20 (twenty) working days since
2 JLN's Request was submitted and acknowledged. Defendants have failed to inform Plaintiff when it will
3 process its request.

4 42. No further information or communication concerning the Request has been received or
5 sent by Plaintiff.

6 43. As of the date of this filing, Defendants have failed to:

- 7
- 8 a. Make a determination regarding Plaintiff's request for expedited treatment;
- 9 b. produce the requested records or demonstrate that the requested records are lawfully
- 10 exempt from production;
- 11 c. notify Plaintiff of the scope of any responsive records Defendants intend to produce
- 12 or withhold and the reasons for any withholdings; or
- 13 d. inform Plaintiff that it may appeal any adequately specific adverse determination.
- 14

15 **FIRST CAUSE OF ACTION**

16 **Violation of FOIA for Failure to Comply with Statutory Deadlines**

17 44. Plaintiff incorporates the foregoing paragraphs herein.

18 45. Defendants are agencies subject to FOIA.

19 46. Plaintiff submitted a request. Through the Request, Plaintiff properly asked for records
20 within the possession, custody and/or control of Defendants. The Request sought expedited treatment.

21 47. Defendants failed to make a determination with respect to Plaintiff's Request within the
22 20-working day deadline required by FOIA. 5 U.S.C. § 552(a)(6)(A).

23 48. Defendants did not claim that unusual circumstances existed warranting additional time
24 needed.

25 49. Defendants also failed to specify any date that the request would be completed.

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Failure to Process on an Expedited Basis

52. Plaintiff properly submitted a FOIA Request to the federal agency Defendants.

53. Through the Request, Plaintiff properly asked for records within the possession, custody and/or control of Defendants.

54. Plaintiff sought to have the Request treated on an expedited basis because it was primarily for the purpose of informing the public about government activity in response to the threat of Hamas and Hezbollah entering the Southern Border.

55. The Request involves a matter of widespread and exceptional public and media attention.

56. Defendants failed to respond on an expedited basis, or even make a determination, as to whether the Request was entitled to expedited treatment.

57. Section 552(a)(6)(E)(iii) provides that “[a]gency action to deny or affirm denial of a request for expedited processing pursuant to this subparagraph . . . shall be subject to judicial review under paragraph (4).”

58. Plaintiff seeks an order requiring Defendants process the Request on an expedited basis.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- 1) order Defendants to conduct a reasonable search for all records responsive to Plaintiff's Request, and to immediately disclose all non-exempt records responsive to the Request in their entirety, as well as all non-exempt portions of responsive records;
- 2) declare that Plaintiff is entitled to disclosure of the records responsive to the Request;

- 3) enjoin Defendants from continuing to withhold all non-exempt records or portions thereof responsive to Plaintiff's Request;
- 4) award Plaintiff reasonable attorney's fees and costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- 5) grant such other relief as the Court may deem just and proper.

Dated: December 4, 2023

Respectfully submitted,

By: /s/ Mark L. Javitch
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